

CCRB INVESTIGATIVE RECOMMENDATION

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|---|---|---------------------------|--|------------------------------------|--|
| Investigator: Enoch Sowah | Team: Squad #1 | CCRB Case #: 201905130 | <input checked="" type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Friday, 05/24/2019 10:48 PM | Location of Incident: In front of 446 Chester Street | Precinct: 73 | 18 Mo. SOL 11/24/2020 | EO SOL 7/11/2021 | |
| Date/Time CV Reported Thu, 06/13/2019 12:29 PM | CV Reported At: CCRB | How CV Reported: Phone | Date/Time Received at CCRB Thu, 06/13/2019 12:29 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |
| | | |
| | | |

| Witness(es) | Home Address |
|-------------|--------------|
| | |

| Subject Officer(s) | Shield | TaxID | Command |
|--------------------------|--------|--------|---------|
| 1. POM Keith Stark | 03636 | 961325 | 073 PCT |
| 2. POM Brian Mahon | 23144 | 949240 | 073 PCT |
| 3. POF Shalimar Scribner | 20375 | 959420 | 073 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|---------------------------|-----------|--------|----------|
| 1. DT3 Omar Veliz | 01739 | 931376 | 075 DET |
| 2. POM Nicholas Lettini | 21384 | 959751 | 073 PCT |
| 3. POM Philip Tantillo | 9988 | 955560 | 073 PCT |
| 4. POM Brett Woodard | 27829 | 958175 | 073 PCT |
| 5. SGT Robert Deferrari | 01012 | 941635 | 073 PCT |
| 6. LT Harry Latorre | 00000 | 919281 | 073 PCT |
| 7. POM John Freund | 31081 | 954827 | 073 PCT |
| 8. SGT John McGivney | 00851 | 942162 | INT CIS |
| 9. POM George Pabon | 15391 | 966251 | 073 PCT |
| 10. POF Stefanie Gosik | 13083 | 956528 | 073 PCT |
| 11. POM Guy Randel | 11570 | 935566 | 073 PCT |
| 12. POM Nicolo Carbonetto | 03105 | 964422 | 073 PCT |
| 13. POF Victoria Bohanan | 29861 | 960260 | 073 PCT |
| 14. POM Suresh Rupram | 31874 | 933305 | 073 PCT |
| 15. POM Derrell Henry | 06754 | 966101 | 073 PCT |
| 16. POM Mdabdul Halim | 15322 | 956714 | 073 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|-------------------------|--|-----------------------------|
| A.POM Keith Stark | Abuse: Police Officer Keith Stark stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. | |
| B.POM Brian Mahon | Abuse: Police Officer Brian Mahon stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. | |
| C.POF Shalimar Scribner | Abuse: Police Officer Shalimar Scribner searched § 87(2)(b) | |

| Officer(s) | Allegation | Investigator Recommendation |
|-------------------------|---|-----------------------------|
| D.POF Shalimar Scribner | Abuse: Police Officer Shalimar Scribner threatened to arrest § 87(2)(b) | |
| E.POM Keith Stark | Force: Police Officer Keith Stark fired his gun at § 87(2)(b) | |

Case Summary

On June 13, 2019, § 87(2)(b) called the CCRB and filed this complaint on behalf of her § 87(2)(b)-old son, § 87(2)(b) and § 87(2)(b)'s friend, § 87(2)(b). § 87(2)(b) was not a witness to the incident. On August 1, 2019, § 87(2)(b) filed a written complaint with the CCRB on behalf of himself.

On May 24, 2019, at approximately 10:40 p.m., in the vicinity of 446 Chester Street in Brooklyn, Police Officers Keith Stark and Brian Mahon of the 73rd Precinct stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants (**Allegations A and B: Abuse of Authority, § 87(2)(g)**). Police Officer Shalimar Scribner of the 73rd Precinct searched § 87(2)(b) and threatened to arrest her (**Allegations C and D: Abuse of Authority, § 87(2)(g)**). PO Stark fired his gun at § 87(2)(b) (**Allegation E: Force, § 87(2)(g)**).

§ 87(2)(b) was arrested and charged with § 87(2)(b) (Board Review 01). § 87(2)(b) was arrested (Board Review 02), but her arrest was later voided and sealed (Board Review 03 – Board Review 04). No other arrests or summonses resulted from this incident.

Two surveillance camera videos, nine police body worn camera videos, and one § 87(2)(b) Video were received for this incident (Board Review 05 – Board Review 16).

Allegation (A) Abuse of Authority: Police Officer Keith Stark stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (B) Abuse of Authority: Police Officer Brian Mahon stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation (C) Abuse of Authority: Police Officer Shalimar Scribner searched § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Shalimar Scribner threatened to arrest § 87(2)(b)

The following facts are not disputed. On May 24, 2019, PO Stark and PO Mahon, of the 73rd Precinct Anticrime Unit, were performing routine patrol in the confines of the 73rd Precinct. § 87(2)(b) and § 87(2)(b) were sitting in a white BMW sedan with New York license plate number § 87(2)(b), which was reported stolen by the owner, § 87(2)(b) (Board Review 23). At approximately 10:40 p.m., PO Stark and PO Mahon observed the white BMW parallel parked across the street from 446 Chester Street in Brooklyn. PO Stark and PO Mahon thus proceeded to stop the vehicle, and requested that additional officers respond to the location.

§ 87(2)(b) (Board Review 18) identified § 87(2)(b) as her boyfriend, and said the vehicle was parked across the street from her mother's apartment. She said the two officers approached the vehicle just as they were about to drive off, and thus consequently acknowledged that the vehicle's engine was on. § 87(2)(b) did not know if the vehicle was registered to § 87(2)(b). § 87(2)(b) did not recall how long § 87(2)(b) had the vehicle, nor did she know who the vehicle belonged to. She acknowledged that the vehicle was not registered to her. She also acknowledged that the vehicle was parked in front of a fire hydrant, and that all four windows were darkly tinted, but did not know if the tints were within the legally required limits. PO Mahon and PO Stark approached the driver and front passenger's sides, respectively, and ordered that both § 87(2)(b) and § 87(2)(b) provide their identification cards (ID). § 87(2)(b) gave her ID to PO Stark. § 87(2)(b) did not have his ID on his person. PO Stark took § 87(2)(b)'s ID, and at some point, ordered § 87(2)(b) to exit the vehicle. Additional officers, identified via investigation as Sergeant Robert DeFerrari and Police Officers Philip Tantillo, Shalimar Scribner, and Brett Woodard, all from the 73rd Precinct Anticrime unit, had at this point

arrived on scene. § 87(2)(b) exited the vehicle, and held a small shoulder bag, containing her keys, cellphone, and some money, in her hand. PO Scribner approached § 87(2)(b) took the bag, opened it and looked inside. PO Scribner then said to § 87(2)(b) “You are going to have to come with us too. We are going to have to take you in.” None of the officers informed § 87(2)(b) as to why her bag was searched, nor did she know why PO Scribner made the alleged statement towards her. § 87(2)(b) acknowledged that she was subsequently transported to the 73rd Precinct stationhouse, and questioned by another officer, who she could not describe, about her relationship with § 87(2)(b) and about the incident that transpired between § 87(2)(b) and PO Stark, which is discussed in Allegation E. § 87(2)(b) denied that she was arrested and charged with any offense.

§ 87(2)(b) in his original written and phone statements to the CCRB said that he was sitting inside the vehicle when officers approached him and began to question him about a lawsuit he had previously filed (Board Review 39- Board Review 40). § 87(2)(b) did not provide any details or context about the incident, and subsequently on the advice of his attorney, elected not to participate with the investigation as a result of his criminal cases stemming from this incident (Board Review 19).

The surveillance footage from 445 Chester Street (Board Review 05) depicts the officers stopping and approaching the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants, but the footage has no audio, and the position of the camera, makes it difficult to determine if PO Scribner interacted with or searched § 87(2)(b)'s shoulder bag.

The NYPD provided only nine out of a total of 32 BWCs for this case (Board Review 17). The NYPD did not release all the BWCs relating to this incident because § 87(2)(b) did not sign an unsealing order form (Board Review 20). PO Mahon's BWC (Board Review 07) was the only footage that captured the entirety of this incident, but the footage is from the point of view of the driver's side of the BMW, and thus does not capture any interaction between PO Scribner and § 87(2)(b).

§ 87(2)(b) (Board Review 16). The video was comprised of aspects of the surveillance footage from 445 Chester Street, and portions of PO Mahon, PO Woodard, and PO Stark's BWCs. The portions of PO Stark's BWC begin at 05:55, and shows PO Stark and PO Mahon exiting their vehicle, and approaching the front passenger and driver's sides, respectively of the white BMW with dark tints on all windows. At 06:35, PO Stark tells § 87(2)(b) that he is parked on a hydrant. At 06:43, PO Stark goes over the radio, and states that they have the “stolen car stopped.” At 06:57, § 87(2)(b) identified via investigation, and whose face is redacted in the video, appears to open the front passenger's door for PO Stark. At 07:00, PO Stark asks § 87(2)(b) if the vehicle belongs to her, but her response, if any, is inaudible. PO Stark then orders § 87(2)(b) to produce her ID. At 07:30, § 87(2)(b) appears to give PO Stark her ID. At 08:00, Sgt. DeFerrari, and Police Officers Woodard, Tantillo, and Scribner arrive on scene. At 08:56, PO Stark tells the officers that he ran § 87(2)(b)'s information, but the vehicle does not belong to her. At 10:10, PO Stark tells the officers, “There is a second 61 on it.” At 10:40, § 87(2)(b) tells the officers that his name is “§ 87(2)(b).” At 11:16, PO Stark appears to type on his handheld device. At 12:00, PO Stark appears to show his handheld device to the other officers, and says to them, “That's him.” At 12:19, PO Scribner, identified via investigation, approaches, and joins PO Stark by the front passenger's side. At 12:36, PO Scribner and PO Stark order § 87(2)(b) to exit the vehicle, and she appears to comply. The

video, however, does not depict any subsequent interaction between PO Stark, PO Scribner, and § 87(2)(b)

PO Stark (Board Review 21) said that a week prior to this incident, a supervisor from the 73rd Precinct, whose name PO Stark did not recall, informed officers that he received information that the missing white BMW sedan had been observed multiple times in the vicinity of the Marcus Garvey Housing complex, located in the vicinity of Chester Street and Riverdale Avenue in Brooklyn, and thus consequently instructed officers to be on the lookout for the vehicle during their routine patrols. PO Stark did not recall if any other information was provided about the missing vehicle, except that the complaint report prepared for the missing vehicle listed § 87(2)(b) as the alleged perpetrator, and that database searches for § 87(2)(b) revealed that he had a violent criminal history (Board Review 22; Board Review 31). PO Stark said he and PO Mahon both observed the white BMW parallel parked at the incident location during their routine patrol of the area, and that they stopped the vehicle because it directly matched the description of the stolen vehicle. PO Stark did not recall if the vehicle's dark window tints, and the fact that it was parked in front a hydrant factored into the officers' decision to stop the vehicle, but said it was possible. PO Stark said that § 87(2)(b) and § 87(2)(b) were both considered under arrest after the officers approached the vehicle and confirmed that the vehicle was not registered to either of them. PO Stark thus requested Sgt. DeFerrari to the scene to verify the arrests, and PO Scribner to assist with the arrest of § 87(2)(b) given that she was a woman. PO Stark did not recall seeing PO Scribner searching § 87(2)(b)'s shoulder bag, but said any search of § 87(2)(b) would have been justified and incident to arrest. PO Stark did not know why § 87(2)(b)'s arrest was ultimately voided.

NYPD Complaint Report #§ 87(2)(b) revealed that on May 6, 2019, § 87(2)(b) reported that § 87(2)(b) was using her vehicle, a white BMW sedan with NYS license plate number § 87(2)(b) without her authorization, and had refused to return the vehicle to her possession (Board Review 23). A Department of Motor Vehicle (DMV) query for NYS license plate § 87(2)(b) matched a white 4 door BMW sedan, which was registered to § 87(2)(b) (Board Review 24).

An officer can stop a vehicle if he has reasonable suspicion that the vehicle and/or its occupants have /are about to engage in any conduct that violates the law, People v. May, 81 N.Y.2d 725 (1992) (Board Review 25).

A search must be incident to an actual arrest, not just to probable cause that might have led to an arrest, but did not, People v. Reid, 24 N.Y.3d 615 (2014) (Board Review 26).

§ 87(2)(g)

Allegation (E) Force: Police Officer Keith Stark fired his gun at § 87(2)(b)

It is not disputed that PO Stark fired his gun at § 87(2)(b)

The surveillance footage from 445 Chester Street (Board Review 05) at 31:37, shows the white BMW sedan parallel parked amongst a row of other vehicles on the eastside of Chester Street with the passenger side next to the curb and its front and rear lights activated. At 31:55, a dark unmarked vehicle, which is heading north on Chester Street, pulls up next to the white BMW, and activates its emergency lights. Two officers, identified via investigation as PO Mahon and PO Stark, exit and approach the driver's and front passenger's sides, respectively of the BMW. The position of the camera makes it difficult to see exactly what is happening, except that the two front doors of the BMW appear to be open. At 33:42, a marked police sedan with their emergency lights activated, drives north on Chester Street, and parks behind PO Mahon and PO Stark's vehicle. The officers in that vehicle do not appear to exit the vehicle. At 34:15, a second unmarked vehicle drives south on Chester Street, and parks directly in front of White BMW. Two officers, identified via investigation as Sgt. DeFerrari and PO Tantillo exit, and approach the driver's side of the white BMW. At 38:00, a third unmarked vehicle, drives north on Chester Street, and parks behind the marked sedan. Two officers, identified via investigation as PO Woodard and PO Scribner, exit and approach the BMW's driver and front passenger sides, respectively. At 38:30, the BMW begins to move slowly forward. At 38:50, the front tires of the BMW appear to turn to the right towards the sidewalk. PO Stark appears to be on the sidewalk. At 38:51, the vehicle speeds onto the sidewalk, and appears to strike the thighs and legs of PO Stark. The BMW continues to move and appears to push PO Stark towards and pin him against a makeshift iron sheet construction wall. At 38:57, PO Stark appears to fall to the ground. At 38:57, § 87(2)(b) exits the driver's seat of the vehicle, and begins to run towards the middle of Chester Street. At 38:59, § 87(2)(b) falls to the ground in the middle of the street. PO Woodard, identified via investigation, approaches, and appears to place § 87(2)(b) in handcuffs.

PO Mahon's BWC (Board Review 07) shows PO Mahon and PO Stark on the driver's and front passenger's sides, respectively. At 00:34, PO Mahon asks § 87(2)(b) if the vehicle is on. § 87(2)(b) replies yes. PO Mahon then orders § 87(2)(b) to produce his driver's license. § 87(2)(b) says that he does not have his driver's license on his person. At 01:30, PO Mahon orders § 87(2)(b) to verbally provide his name and date of birth. § 87(2)(b) replies that his name is "§ 87(2)(b)" and that his date of birth is "§ 87(2)(b)." At 2:00, PO Mahon moves to the rear door on the driver's side and begins to type on his handheld device. Sgt. DeFerrari, PO Woodard, and PO Tantillo, approach PO Mahon by the rear passenger's door. At 03:03, PO Mahon tells the officers that § 87(2)(b) appears to be lying about his name. At 03:02, Sgt. DeFerrari approaches the driver's door, which is open, and speaks with § 87(2)(b) about the name and date of birth he provided. At 04:00, PO Mahon informs Sgt. DeFerrari that the vehicle matches the stolen vehicle, but the name of the alleged perpetrator does not correspond to § 87(2)(b). At 06:00, Sgt. DeFerrari informs § 87(2)(b) that there is no results for the name and date of birth he provided, and that it appears § 87(2)(b) is lying to the officers. At 06:11, PO Stark, who is by the front passenger's door, shows his handheld device to Sgt. DeFerrari and PO Mahon, and says to the officers, "That's him." At 06:22, PO Mahon approaches Sgt. DeFerrari by the driver's door,

while PO Tantillo moves to the front fender of the vehicle on the driver's side. PO Woodard appears to remain by the rear door on the driver's side. At 06:42, PO Mahon and Sgt. DeFerrari ask § 87(2)(b) to exit the vehicle. At 06:48, § 87(2)(b) asks why he has to exit the vehicle. At 06:52, the vehicle begins to move slowly forward, prompting the officers to yell, "Woah, Woah" and "You have nowhere to go." At 06:55, the vehicle appears to speed onto the sidewalk to the right, and PO Mahon yells, "Yo, Watch out." At 06:56, the vehicle appears to collide or hit something, but whatever the vehicle hits is not clearly depicted. At 06:57 the vehicle is completely on the sidewalk and continues to move forward. At 06:58, what appears to be two simultaneous gunshot sounds are heard. At 06:59, the vehicle stops moving, and appears to have collided into a makeshift iron sheet construction wall on the sidewalk. At 06:59, what sounds like a third gunshot is heard. At 07:01, PO Mahon runs towards the sidewalk and approaches the vehicle, which is less than four feet away from him. It is impossible to see what is happening at this point due to the fact that it is very dark outside, and PO Mahon's rapid bodily movements. At 07:11, PO Mahon goes over the radio and requests additional officers and an ambulance to the location for an officer who has been struck with a vehicle. At 07:19, PO Stark is lying on the ground next to the white BMW on the sidewalk, and appears to be howling in pain. PO Scribner is kneeling next to PO Stark, and tells PO Stark not to move. At 08:00, multiple additional officers in uniform and plainclothes begin to arrive on scene. The video ends at 10:58.

PO Stark's BWC as captured in the video § 87(2)(b) (Board Review 16), shows PO Stark at 12:38, standing by the front fender of the vehicle on the front passenger's side as § 87(2)(b) exits the vehicle. At 12:43, Sgt. DeFerrari appears to order § 87(2)(b) to exit the vehicle. § 87(2)(b)'s right hand appears to be holding the steering wheel, while his left hand appears slightly raised in front of him. At 12:44, § 87(2)(b) appears to take his right hand off the steering wheel, at which point the vehicle begins to slowly move forward. At 12:46, PO Stark appears to be in front of the vehicle. At 12:47, the vehicle's engine makes a roaring sound, and the vehicle appears to speed towards the direction of PO Stark. At 12:49, a loud crashing sound is heard, at which point the front of vehicle appears to strike PO Stark, and thus causing the camera to shake. At 12:50, PO Stark yells, "Ahh Fuck!" § 87(2)(b) § 87(2)(g)

§ 87(2)(b) in his original written and phone statements to the CCRB said one of the officers fired their gun into the vehicle, and that § 87(2)(b) was struck in the hand, stomach, and face (Board Review 39- Board Review 40). § 87(2)(b) did not provide any details or context about the incident, and subsequently on the advice of his attorney, elected not to participate with the investigation as a result of his criminal cases stemming from this incident (Board Review 19).

§ 87(2)(b) said she heard approximately three to four gunshots as soon as she exited the vehicle, and that § 87(2)(b) moved the vehicle onto the sidewalk after PO Stark fired his gun. She, however, did not know why § 87(2)(b) moved the vehicle onto the sidewalk. § 87(2)(b) said she did not at the time of the incident know whether § 87(2)(b) or any officer sustained any injuries, but that she subsequently found out from § 87(2)(b) that he injured his hand as a result of the officer's firearm discharge.

PO Stark's testimony was consistent with the video footages. He acknowledged that the officers were aware that the vehicle was on when they approached, but did not recall if § 87(2)(b) was ordered to shut it off. PO Stark said he observed § 87(2)(b) turning the steering wheel of the vehicle towards the sidewalk when the officers ordered § 87(2)(b) to

exit the vehicle, and that the officers all ordered § 87(2)(b) to stop. § 87(2)(b) however, appeared to accelerate the vehicle towards the sidewalk. The vehicle struck PO Stark on his legs and thighs, and caused PO Stark to land on the hood of the vehicle. PO Stark then observed § 87(2)(b) through the windshield manipulating the steering wheels of the vehicle, and appearing to further accelerate the vehicle. PO Stark, fearing for his life, drew his gun and fired into the vehicle. PO Stark had no other reasons for discharging his firearm. PO Stark fired approximately three rounds into the vehicle. The vehicle collided into the iron sheet wall, and PO Stark was pinned between the vehicle and the wall. PO Stark did not know where in the vehicle the bullets struck, but said he subsequently found out that the bullets struck the windshield and front passenger's side window. PO Stark sustained injuries to his back, lower legs, and ankle, and was removed to § 87(2)(b) (Board Review 27- Board Review 29). PO Stark did not at the time of the incident know if § 87(2)(b) sustained any injuries, but said he subsequently found out that one of the bullets from his firearm "grazed" § 87(2)(b)'s right hand, and that he was removed to § 87(2)(b). The TRI prepared in regards documented three gun shots fired but one "hit." The property voucher documented that two bullets struck the front windshield while a third hit the passenger's side mirror (Board Review 28; Board Review 30).

A police officer may use deadly physical force when they reasonably believe that the use of deadly physical force is necessary to defend the police officer or another person from what the officer reasonably believes to be the use or imminent use of deadly force. New York Penal Law §35.30 (Board Review 32).

Officers are authorized to discharge their firearms to prevent or terminate the unlawful use of force that may cause death or serious physical injury. NYPD Patrol Guide Procedure 221-01 (Board Review 33).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 34).
- § 87(2)(b) has been a party to one CCRB complaint, and a named victim in two allegations (Board Review 35).
 - § 87(2)(b)
- PO Stark has been a member of service for five years, and has been a named subject in five CCRB complaints, and nine allegations, none of which were substantiated, § 87(2)(g)
- PO Mahon has been a member of service for 10-years, and been a named subject in five CCRB complaints, and nine allegations, three of which were substantiated:
 - Case #201102448 involved substantiated stop and question allegations. The Board recommended charges, but the NYPD did not impose any penalty.

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